IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : R.S.A.No.2795 of 2005 (O&M)

Date of Decision : November 27, 2006.

Haryana State Agricultural Marketing Board ..... Appellant

Vs.

Babu Lal ..... Respondent

Coram : Hon'ble Mr.Justice P.S.Patwalia

* * *

Present : Mr.Ram Chander, Advocate
for the appellant.

Mr.O.P.Sharma, Advocate
for the respondent.

* * *

P.S.Patwalia, J. (Oral) :

The present Regular Second Appeal has been filed by the defendant against a judgment of reversal. The trial court had dismissed the suit filed by the plaintiff. However on first appeal, the appellate court reversed the findings of trial court and decreed the suit. In the suit the plaintiff had claimed salary from 2.11.1995 to 30.3.2001 as an Executive Officer-cum-Secretary of Market Committee.

A substantial question of law that arises for determination in this Regular Second Appeal is as to whether the plaintiff is entitled for salary for the period from 2.11.1995 to 30.3.2001 when he did not discharge his duties on the post of Executive Officer-cum-Secretary of Market Committee as he was facing a criminal trial during the said period.

Briefly the facts are that the plaintiff was involved in a criminal case and on account of his involvement in a criminal case he was not

promoted as an Executive Officer-cum-Secretary of Market Committee at the time when the persons junior to him were promoted. He was ultimately acquitted on 5.7.1999. It is the admitted position before me that this acquittal was after granting the plaintiff benefit of doubt. After his acquittal vide order dated 30.3.2001 he was promoted as Executive Officer and promotion was given to him with effect from 2.11.1995. However since the plaintiff did not work from 2.11.1995 to 30.3.2001 he was denied salary for the said period. He therefore filed the present civil suit claiming salary for the aforementioned period. It was his case that he was falsely implicated in the criminal case and on that account was denied promotion. Thus he could not be denied salary on account of promotion with effect from the date the promotion was actually due to him. The Lower Appellate Court has quoted the judgment of the Hon'ble Supreme Court in ***Union of India versus K.V.Janakiraman etc. etc.*** reported as ***AIR 1991 SC 2010*** which lays down the law as to when salary is payable where an employee is promoted with retrospective effect. The relevant paragraphs of the said judgment are as hereunder :-

> *"We are, therefore, broadly in agreement with the finding of the Tribunal that when an employee is completely exonerated meaning thereby that he is not found blameworthy in the least and is not visited with the penalty even of censure, he has to be given the benefit of the salary of the higher post alongwith the other benefits from the date on which he would have normally been promoted but for the disciplinary/criminal proceedings. However, there may be cases where the proceedings, where disciplinary or criminal are, for example, delayed at the instance of the employee or the clearance in*

the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on account of non-availability of evidence etc. In such circumstances, the concerned authorities must be vested with the power to decide whether the employee at all deserves any salary for the intervening period and if he does, the extent to which he deserves it. Life being complex, it is not possible to anticipate and enumerate exhaustively all the circumstances under which such consideration may become necessary. To ignore, however, such circumstances when they exist and lay down an inflexible rule that in every case when an employee is exonerated from disciplinary/criminal proceedings he should be entitled to all salary for the intervening period is to undermine discipline in the administration and jeopardise, public interests. We are, therefore, unable to agree with the Tribunal that to deny the salary to an employee would in all circumstances be illegal. While, therefore, we do not approve of the said last sentence in the first sub paragraph after clause (iii) of paragraph 3 of the said Memorandum, viz...," but no arrest of pay shall be payable to him for the period of notional promotion preceding the date of actual promotion". We direct that in place of the said sentence the following sentence be read in the Memorandum.

"However, whether the officer concerned will be

> *entitled to any arrears of pay for the period of notional promotion preceding the date of actual promotion, and if so to what extent will be decided by the concerned authority by taking into consideration all the facts and circumstances of the disciplinary preceding/criminal prosecution. Where the authority denied arrears of salary or part of it, it will record its reasons for doing so."*

A reading of the said paragraphs would show that where the acquittal is on benefit of doubt the employer has a right to decide whether or not the employee deserves any salary for the intervening period. It is in the exercise of this right that in the present case the employer has taken a view that since the plaintiff did not actually discharge his duties for the said period he is not entitled to salary. I do not find any error in the same. Learned counsel for the respondent-plaintiff submits that in fact the plaintiff had discharged duties as Secretary even during the aforesaid period. He relies upon a document which was exhibited as Ex.P-5. I have seen the document. A reading of the same would show that the plaintiff had worked as Executive Officer from 28.3.1997 to 31.7.1997. Thus on the strength of this document also the plaintiff cannot be held entitled to salary from 2.11.1995 to 30.3.2001. I therefore find no justification in the plea raised by the learned counsel for the respondent-plaintiff. The claim for salary for the aforementioned period is therefore declined.

The question of law framed in the opening paragraph of the judgment is answered against the plaintiff. Accordingly judgment and decree of the learned Additional District Judge is set aside and that of the trial court dismissing the suit of the plaintiff is restored. The Regular Second Appeal is therefore allowed.

November 27, 2006 (P.S.Patwalia)
monika Judge